IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.4821 OF 2005

1. Shri. Muhammed Tayyab Md. Tahir Ansari
2. Shri. Mohd. Tariq Md. Tahir Ansari
3. Shri. Muhammed Tufail Md. Tahir &
4. Shri. Muhammed Athar Md. Tahir Ansari ...Applicants

Vs.
The State of Maharashtra ...Respondent

Shri. Anamika Malhotra for the Applicants.
Ms S. D. Shinde, A.P.P. for the Respondent.

CORAM : A.S.OKA, J.
DATED : AUGUST 03, 2005.

P.C.:

1. Heard Advocate appearing for the Applicant and the learned A.P.P. for the State. The Applicants herein applied for grant of Anticipatory Bail before the Sessions Court by Application dated 09th March, 2005. The said Application was allowed by order dated 05th April, 2005. While allowing the Application, the learned Sessions Judge granted liberty to the Investigating Agency to approach the said court for direction including cancellation of bail in case the Investigating Agency finds material which can point out an accusing finger at the Applicants. An Application for cancellation of bail was moved by the prosecution on 18th July, 2005. The Applicants made a fresh Application for grant of Anticipatory Bail on the same day. Both the Applications were decided by a common judgment and order. The learned Sessions Judge by order dated 18th July, 2005 allowed the Application

filed by the prosecution and cancelled the Anticipatory Bail granted earlier. The learned Sessions Judge stayed the operation of said order till 26th August, 2005 to enable the Applicants to invoke the provisions of section 439 of the Code of Criminal Procedure, 1973 before Regular Court and liberty was granted to the Applicants to surrender before the police.

2. Though the Applicants have not challenged the order cancelling Anticipatory Bail, I have considered the case made out in this Application for Anticipatory Bail on merits.

3. The learned Advocate for the Applicants submitted that there is a gross delay in lodging F.I.R. for the offence which has allegedly taken place on 28th December, 2004. F.I.R. was lodged on 15th March, 2005. The learned Advocate for the Applicants submitted that only on the basis of report of Department of Anatomy, the Applicants are sought to be arrested. The learned Advocate appearing for the Applicants submitted that in this case where F.I.R. is belatedly lodged, the Applicants are sought to be arrested only on the basis of suspicion. It was submitted that in the F.I.R. it is alleged that the deceased committed suicide and the cause of death mentioned in the Post Mortem Notes on the basis of the

certificate of Department of Anatomy is shown as head injury (un-natural). The learned Advocate for the Applicants therefore, submitted that case is made out for grant of Anticipatory Bail.

4. The learned A.P.P. has submitted that in view of the subsequent material collected by the Investigating Officer, sections 302 and 304(II) of the Indian Penal Code have been invoked and considering the material on record, custodial interrogation of the Applicants is required.

5. It is pertinent to note that when the learned Sessions Judge granted Anticipatory Bail in favour of the Applicants by order dated 05th April, 2005, the Post Mortem Notes showing cause of death was not available to the prosecution. On 16th May, 2005 the Department of Anatomy, Grant Medical College, Mumbai on examination of the bones of the deceased recorded an opinion that on the skull, there is discontinuity on occipital bone and small inferior portion of right parietal bone was missing. The opinion recorded is that this can be due to any sharp object coming into contact of skull which can be antemortem or postmortem and this can be also due to any hard object coming in contact on the right aspect of the skull which can be antemortem or postmortem. There is some explanation for delay in lodging the F.I.R. in the statement of

the first informant. There are allegations against the Applicants of illtreating the deceased. The allegation of the first informant is that the dead body of the deceased was kept at the place of residence of the Applicant Nos.2 and 3 which was earlier the matrimonial home of the deceased. The allegation is that the Applicants gave threats to the first informant as a result of which first informant did not file complaint immediately.

6. Considering the gravity of allegations and the gravity of offence, it cannot be said that custodial interrogation of the Applicants is not required. There is no merit in the Application and the Application is rejected. The direction of the learned Sessions Judge by which his own order is stayed till 26th Agusut, 2005 to enable the Applicants to surrender and apply for regular bail is also confirmed.

JUDGE